THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

3 **CIVIL SUIT NO. 0038 OF 2021**

ABASI BALINDA TRANSPORTERS LTD :::::::::::::::::::::::::: PLAINTIFF

VERSUS

6 **MAGRIC WATER GENERAL HARDWARE LTD ::::::::::: DEFENDANT**

BEFORE: HON. JUSTICE VINCENT WAGONA

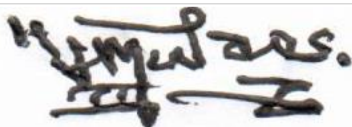
JUDGMENT

9 **Introduction:**

The plaintiff brought this suit by way of summary suit and later leave to appear and defend was granted seeking to recover shs 50,578,814 for paint and other goods
12 supplied to the defendant on credit and were not paid for, general damages for breach of contract, interest on the decretal sum at 48% from the date of default till payment in full, interest on general damages from the date of judgment till payment in full
15 and costs of the suit.

The case of the Plaintiff:

On 7/6/2020, 25/6/2020 and 7/4/2020, the defendant ordered for and was supplied
18 paint and other hardware items on credit by the plaintiff's hardware. The defendant paid for some goods and remained with a balance of shs 50,578,814/=. The plaintiff duly supplied the goods and the same were received by the defendant. The goods
21 were supplied on credit and the defendant undertook to pay in the course of business.



On several occasions the plaintiff demanded for payment and the defendant adamantly refused to pay.

3 **The case of the Defendant:**

The defendant never obtained any goods on credit from the plaintiff. The said goods were paid for in full. The defendant is not indebted to the defendant.

6 **Issues:**

Three issues were framed by parties during scheduling thus:

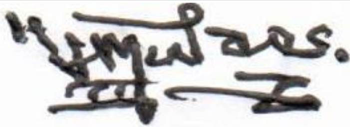
1. **Whether the plaintiff has a cause of action against the defendant.**
9
2. **Whether the defendant is indebted to the plaintiff.**
3. **What remedies are available to the parties?**

Representation and hearing:

12 ***Mr. Kyaligonza Robert*** appeared for the plaintiff while ***Mr. Kasigazi Francis*** appeared for the defendant. Both the plaintiff and the defendant relied on evidence of one witness each and filed written submissions which I have considered herein.

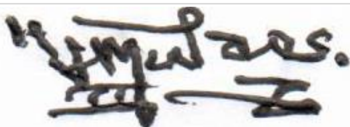
15 **Evidence:**

PW1 (Abasi Balinda), a director of the plaintiff's company testified that on 7/6/2020, 25/6/2020 and 7/4/2020, the defendant ordered for and was supplied paint
18 and other hardware items on credit from the plaintiff's hardware shop. The defendant paid for some goods and remained with a balance of shs 50,578,814/= He presented credit request forms/contracts admitted as PE1 and PE2. The plaintiff dully supplied
21 the items to the defendant which were received by the defendant's workers. He presented delivery notes for the goods and the same were admitted as PE3, PE4 and PE5. The items were supplied on credit and the defendant promised to pay in due



course of business which he did not do. That the plaintiff on several occasions demanded for payment of the said money but the defendant adamantly refused to
3 respond. The defendant's conduct has caused the plaintiff to suffer loss. The plaintiff thus prayed to recover the sum in default, general damages, interest on the decretal sum and costs of the suit. In cross examination he stated that there was a local
6 purchase order. But a person could purchase without a local purchase order. PE1 is a delivery note. The plaintiff delivered 400 bags of cement and there is a credit request form. It is issued to customers who buy goods on credit. It shows he sold
9 400 bags of cement each at shs 27000. PE1 is also one of the documents. The price is on the credit request form and quantity on the delivery note. His staff signed on the credit request form. When he delivered the goods on 7/4/2021, the practice was
12 that he would pay without them having to make an invoice asking for payment. In this case, he did not pay and he did not make the invoice. In PE2, the credit request and delivery notes were faint. In PE3 and PE5 they never used the credit request. He
15 signed on the delivery notes which are PE3 to PE5. The defendant was his customer. The plaintiff kept supplying the defendant who asked to pay later saying that the sales were rather slow. For these transactions, he made no invoice or demand notice
18 because of the conduct exhibited by the defendant that forced him to come to court. The defendant did not pay him on the transactions in issue. In his sales practice, he could use delivery form without a credit request form. It would still mean the goods
21 are not paid for. He would send the goods to the defendant with a delivery note who would receive them and sign on the delivery note.

DW1 (Turyasingura Charles), the Managing Director of the defendant's company
24 testified that on 7/6/2020, 25/6/2020 and 7/4/2020, the plaintiff supplied goods to the defendant which were paid for by the defendant in cash upon delivery. The



defendant never requested goods on credit and has never obtained any goods on credit and never signed the alleged credit request form. There is no way the plaintiff could make more deliveries to the defendant on 7/4/2020 when the plaintiff was still demanding for payment from the defendant for goods supplied on 7/6/2020 and 25/6/2020. The defendant is not indebted to the plaintiff whatsoever. In cross examination he stated that whenever the plaintiff would supply goods to the shop, he would issue to him delivery notes. PE3 was one of them. PE4 looked like one of them and PE5. Muhwezi Herbert used to be his employee; he was the one who received the goods. PE1, the delivery note was signed by his employees. They received 400 bags of cement and bought each at shs 27,000/=. He has never requested for goods on credit. He received goods and would pay cash. The plaintiff had never issued him with a demand notice. He saw him coming to court. The goods were delivered to him and paid upon delivery. He could not remember how much it was in total but it was cash on delivery. He paid the plaintiff.

Resolution:

Preliminary point of law raised by the Respondent:

The suit by the plaintiff was filed without a company resolution as required by law. That PW1 in his testimony claimed that the plaintiff had granted authority to institute the case by way of a resolution but none was adduced.

In ***Rubaga Building Company Ltd v Gospal DevsiVekaria& Anor, Civil Suit No. 0534 of 2014, Kawesa J*** observed that; "*It is trite law that a suit instituted in the names of a company without the authority of the directors is incompetent*." In ***Bugerere Coffee Growers Ltd v Sebadduka& Anor (1970) 1 E.A*** court observed that; "*When companies authorize the commencement of a legal proceeding, a*

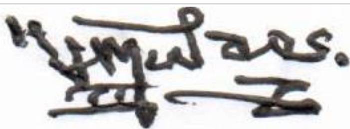
resolution or resolutions have to be passed either at a company or board of directors meeting and recorded in the minutes." In ***Masaka Tea Estates Ltd v Samalia*** 3 ***(Kiganja) Tea Ltd & Anor, HCMA No. 505 of 2004, Barko J (as he then was)*** held that; "*a suit instituted in the names of a company without authority of the directors is not maintainable in law. The suit was also struck off for want of authority to* 6 *institute it."*

Since in the current suit there is no resolution empowering the Director (PW1) to file the suit, the same is incompetent and thus should be struck out with costs.

9 **CONSIDERATION BY COURT:**

It appears to me that the current jurisprudence has settled the issue. It is not a mandatory requirement for a company to take out resolution prior to commencement 12 of a suit. In ***In HCMC No. 11 of 2019, Money Lenders Association Uganda Limited 10 & Anor v Uganda Registration Services*** *Bureau,* Wejuli J held inter-alia that: ***"It is indeed a settled position of the law in this jurisdiction, that Resolution to*** 15 ***commence a suit is not a necessary pre-requisite….."*** In **Alisen Foundation Group of Companies v Bazara Julius, HCMA No. 54 of 2023** I stated that ***"There however seems to be a deliberate legal migration by Courts from the position in Bugerere*** 18 ***Coffee Growers (supra) where courts have observed that the failure to take out such resolution prior to commencement of the suit does not render the same a nullity".***

21 The Companies Act allows directors to act on their behalf and any action done or taken by a director by virtue of section 65 of the Companies Act of Nigeria binds the company as if it was an act by the company. Therefore, where a director authorizes 24 commencement of a suit, it is assumed that the authority was given by the company.



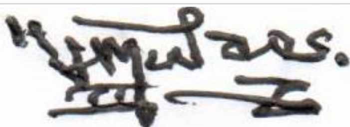
Section 52 of our Companies Act authorizes the directors to deal or transact on behalf of the company beyond what is stated in the company's memorandum. Section 59 further adds that any document or proceeding requiring authentication by a company shall be signed by a director and need not be under its common seal. The Companies Act gives the Directors powers to act beyond what is provided for under the memorandum, which may include commencement of proceedings in the Courts of law.

In ***United Assurance Co. Ltd v Attorney General, Civil Appeal No. 1 of 1986 15 (unreported) which was cited with approval in Civil Appeal No. 10 of 1994, NavichandaKakubhaiRadia v KakubhaiKalidas& Co. Ltd,*** *it was observed thus: "Every case must be decided on its own facts. Looking at the various authorities and the law, I would say that one way of providing a decision of the board of directors is by its resolution in that behalf. But I would not go so far to say as suggested in Bugerere Coffeee Growers Ltd v Sebanduka supra, unless of course the law specifically requires a resolution as appears to be the case in instances specifically provided for in the Companies Act, an authority to bring action in the names of the company is not one of those instances where a resolution is required."*

PW1, the director of the plaintiff stated in cross examination that he filed the suit on behalf of the company. Going by the reasoning in ***Alisen Foundation Group of Companies (supra),*** the director being the mind and soul of the plaintiff, he had the power to do so and such authorization is taken to have been given by the company. I therefore overrule this point of law.

Issue No. 1: Whether the plaintiff has a cause of action against the defendant.

Submissions for the Plaintiff:

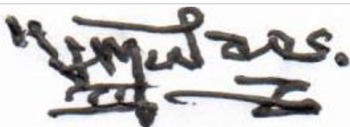


In ***Tororo Cement Co. Ltd v Frokina International Ltd (2001) KALR 232*** citing with approval the case of ***Read v Brown 22 QBD 31 and Auto Garage v Motokov*** 3 ***(No. 3) [1971] E.A No. 514***, it was held that a cause of action means every fact which is material to be proved to enable the plaintiff to succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment. A plaint discloses a 6 cause of action even though it omits some facts which the rules require it to contain and which must be pleaded before the plaintiff can succeed in the suit. What is important in considering whether a cause of action is revealed by the pleadings is 9 whether the plaintiff enjoyed a right, that right has been violated and the defendant is liable.

It was pleaded that on 7/6/2020, 26/6/2020 and 7/4/2021, the defendant ordered for 12 and was supplied with paint and other hardware items on credit from the plaintiff's hardware shop and he paid for them leaving a balance of shs 50,578,814. The defendant under paragraph 4 of the written statement of defense admitted supply and 15 receipt of the goods but added that the same were paid for fully. The plaintiff enjoyed a right over the goods he supplied to the defendant, the right was violated by the defendant by refusing to pay the remaining balance and is liable to pay the same. 18 The plaintiff's plaint discloses a cause of action against the defendant.

<u>Submissions for the Defendant:</u>

The plaintiff has no cause of action against the defendant. Whereas Section 5(1) of 21 the Sale of Goods and Supply of Services Act No. 10 of 2018 is to the effect that a contract for sale of goods and supply of service may be oral or written or partly oral and partly written, section 10(5) of the Contracts Act 2010 requires a contract the 24 subject matter of which exceeds twenty-five currency points to be in writing.



PE1 and PE2 were never signed by the defendant's company per the evidence of PW1 who stated that the form was signed by the staff. Therefore the defendant was not a party to the contract and the plaintiff has no cause of action. Whereas learned counsel for the plaintiff submitted that court considers the original copies attached to the written submissions, the plaintiff never brought the documents during hearing of the case. The defendant did not sign PE1 and PE2 as such she is not a party to the said contract as such there was no request for goods on credit or a valid contract as alleged by the plaintiff. The law requires such documents to be in writing and PE1 and PE2 do not pass the test.

CONSIDERATION BY COURT:

A cause of action connotes every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. (***See GladyNdukuNthuki Vs. Letshego Kenya & Anor, Kenya High Court Civil Suit No. 007 of 2021).*** In ***Kusum Ingots & Alloys Ltd. v. Union of India,*** **(2004) 6 SCC 254).** The Supreme Court of India interpreted the term ***'cause of action'*** to mean "every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court". It is that bundle of facts which, taken together with the applicable law, entities the plaintiff to relief against the defendants."

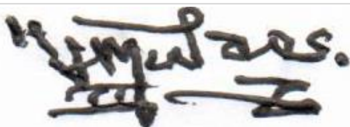
Therefore, for one to satisfy court that he or she has a cause of action, he or she must plead facts in the plaint which if proved would entitle him to judgment in respect of the claim in the plaint. The plaintiff must prove that he enjoyed a right which is protected by statute, common law or equity, that that right was violated and that the

defendant is responsible for such violation to entitle him or her to the reliefs sought. (***See <u>Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001</u>).***

3 In ascertaining whether a plaint discloses a cause of action or not, court should limit its self to the plaint and the annexures thereto. ***(See Kebirungi vs. Road Trainers ltd & 2 others [2008] HCB 72.*** A party's claim against the defendant must be disclosed 6 in the plaint and not any other subsequent pleadings. A party for instance cannot claim that the cause of action is well pleaded in the reply to the written statement of defense since a reply is not a pleading that commences an action in law.***(See* 9 *Mwesige Richard v Kazooba Peter & 2 others, HCCS No. 036 of 2022).***

In Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000 court expressed itself thus: "***No suit should be summarily dismissed* 12 *unless it appears so hopeless that it is plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment."***

15 In the case before me, the plaintiff's claim as captured in the amended plaint is for breach of contract and recovery of shs 50,578,814/= arising from supply of goods on credit to the defendant. The plaintiff amply pleaded under paragraph 4(a) and 18 4(b), that on 7/6/2020, 25/6/2020 and 7/4/2021, that the defendant ordered goods (hardware items) on credit which were delivered and later the defendant failed to pay. The plaintiff attached PE1 and PE2 as annexure to the plaint being credit request 21 forms signed by the defendant. The plaintiff also attached copies of the delivery notes where the goods were received by the defendant. The plaintiff further pleaded under paragraph 4(d) that after the goods were delivered, the plaintiff made demands 24 for payment and the defendant refused to pay. The defendant on the other hand



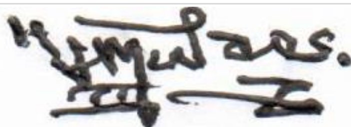
denied being indebted and claimed that the goods were supplied but she paid for in cash.

3 It is deducible from the plaint that the bundle of facts pleaded by the plaintiff and the annexure thereto if proved, the plaintiff would be entitled to judgment for breach of contract and the remedies indicated in the plaint. The facts as presented invite a 6 decision of court as to whether there was a contract and if so, whether the same was breached by the defendant to entitle the plaintiff to the remedies sought. The plaintiff asserts that he enjoyed a right being entitlement to the goods supplied to the 9 defendant and that right was breached by the defendant who after allegedly receiving the goods refused to pay for the same. I therefore find that the plaint discloses a cause of action and accordingly resolve this issue in the affirmative.

12 **Issue No.2: Whether the defendant is indebted to the plaintiff.**

Submissions for the Plaintiff:

On 7/6/2020, 25/6/2020 and 7/4/2020, the defendant ordered for and was supplied 15 with paint and other hardware items on credit by the plaintiff from the plaintiff's hardware shop and paid for some leaving an unpaid balance of shs 50,578,814/= which the defendant refused to pay. PW1 presented PE1 which was not objected to 18 by the defendant which is a contract request form No. 7451 dated 7/4/2021 where the plaintiff supplied 400 bags of cement at shs 27000/ each. DW1 admitted in cross examination having been supplied the 400 bags of cement and claimed he paid cash 21 on delivery. PW1 also presented PE2 being a credit request form/contract No. 5212 dated 25/6/2020 wherein the plaintiff supplied iron sheets of shs 40,320,000/=. DW1 admitted in his witness statement at para 4 that the defendant received goods from 24 the defendant on 25/6/2020 and claimed that they paid cash upon delivery. The

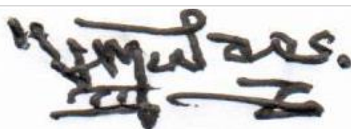


defendant does not dispute receiving the goods. Although the original copies of PE1 and PE2 were not availed at hearing, counsel invited court to consider the carbon copies attached to the plaintiff's written submissions.

Mr. Kyaligonza thus contended that the goods in issue were never paid for by the defendant thus the sum claimed by the plaintiff is still due and owing. In ***Kyadok Hardware Ltd v Kwik Building Contractors, Civil Suit No. 40 of 2014*** which cited with approval the position in ***Joseph Constantine Steamship Line v Imperial Smelting Corporation Ltd [1942] AC 154 and JK Patel v Spear Motors Ltd, SCCA No. 04 of 1991 [1993] VI KALR 8*** it was held inter-alia; "*that the burden of proof rests upon a party who substantially asserts the affirmative issue and the standard required in civil cases is generally expressed as proof on the balance of probabilities. That if the evidence is such that the tribunal can say, we think it more probable than not, the burden is discharged but if the probabilities are equal, it is not. That is the law is that where one party alleges that it paid another and the other denies receipt of the payment, the onus is on the party who alleges payment to prove the payment.*"

The plaintiff through PE1 and PE2 confirmed that they supplied to the defendant goods on credit worth shs 50.578,814 which were not paid for. Whereas the defendant alleged payment on cash, no evidence was presented to prove such a fact as required by law. There is no proof that the defendant paid for the goods supplied by the plaintiff in cash. That as such the plaintiff proved on the balance of probability that the defendant is still indebted to her to the tune of shs 50,578,814/-. Learned counsel thus asked court to resolve this issue in the affirmative.

<u>Submissions for the Defendant:</u>



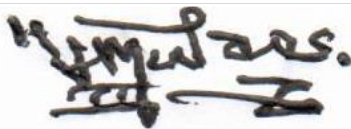
PW1 relied on PE1 and PE2 which are credit request forms/contracts and in his own testimony, PW1 during cross examination, admitted that the forms were signed by his staff. The defendant did not sign the forms. DW1 stated that all the goods supplied were paid for upon delivery. PE1 and PE2 did not show the goods which were delivered and did not show the nature of goods the defendant requested to be supplied on credit.

The plaintiff failed to prove the goods supplied, how much was paid for and how the balance arose which is claimed herein. The testimony of DW1 is clear and unchallenged. The defendant company had no obligation to prove their indebtedness to the plaintiff. The duty to prove the plaintiff's claim is solely on on the plaintiff under section 101(2) and 103 of the Evidence Act. The delivery notes tendered by the plaintiff only show that goods were delivered but does not show that they were not paid for. PE1 does not show the goods allegedly requested by the defendant on credit. PW1 confirmed that PE1 was not signed by DW1 but the staff. Whereas the defendant did not deny receiving the goods, he gave a clear explanation that the goods were always paid for in cash upon delivery.

PW1 failed to prove to court the goods which were supplied and paid for and those which were not paid for and the mechanism of payment. DW1 on the other hand maintains that payment was in cash on delivery and this was not denied by PW1. The plaintiff failed to prove her case against the defendant and therefore this issue ought to be determined in the defendant's favour.

CONSIDERATION BY COURT:

I will first determine the question whether or not there is a valid contract that the plaintiff alleges was breached by the defendant. Section 10(1) of the Contracts Act

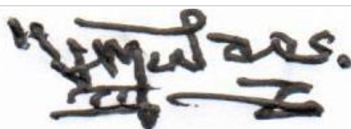


No. 7 of 2010 defines a contract as an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object,
3 with the intention to be legally bound. Further section 10(2) is to the further effect that a contract may be oral or written or partly oral and partly written on implied from the conduct of the parties.

6 Section 10(3) is to the effect that contract is in writing where it is—(a) in the form of a data message; (b) accessible in a manner usable for subsequent reference; and (c)otherwise in words. Therefore, a contract is deemed to be in writing if it falls
9 within the definition under section 10(3). Further section 10(5) is to the effect that a contract whose subject matter exceeds twenty-five currency points shall be in writing.

12 It was contended for the defendant that PE1 and PE2 referred to as credit request forms per the evidence of PW1 do not satisfy the requirements of section 10(5). Further, that PE1 and PE2 were not signed by DW1 per the testimony of PW1 as
15 such they do not bind the defendant. It was contended that there was no valid contract between the plaintiff and the defendant.

To begin with, PE1 is a credit request form/contract dated 7th April 2021. On the first
18 part of PE1, it is indicated that it is a "***Credit Agreement***" and items requested for were cement each at shs27000 and period of repayment was 10 days. Magric Water is indicated as the customer and Charles applied for the goods and it was approved
21 by Praise, an officer of the plaintiff. On the second part, it indicates the quantity as 400 bags delivered by motor vehicle No. UAV 234M and the goods were received by Mr. Ainebyona Bright.

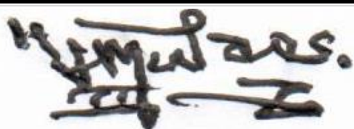


PE2 is also a credit request form/contract dated 25th June 2020. On the first part Magric Water is indicated as the customer, the items applied for were iron sheets each at 36000 making a total of 40,320,000/-.The person who is indicated as the one who authorized the making of the order was Charles Turyasigura and the orders was approved by Salma on behalf of the plaintiff and at the bottom it is indicated that it is a credit agreement and payment was to be made on the account. On the second part, it is indicated that the items were derived by Mr. Sadru Abdallah a driver of truck no. UBD 309N and the goods were received by a one Ainebyona Bright.

Both PE1 and PE2 are in writing, they indicate the goods transacted in being cement and iron sheets. They also capture the consideration and there was delivery of the goods involved to the defendant. I find that PE1 and PE2 fall perfectly well within the definition of a written contract under section 10(3) of the contracts Act and the definition of a contract under section 10(1) of the Contracts Act.

The fundamental question that accrues thereafter is whether or not the defendant was part of the said contract to be bound by the same? Mr. Kasigazi learned counsel for the defendant seems to argue that since DW1 did not sign the same, then the defendant is not bound by such contract.

It is not in dispute that the defendant is a corporate body and thus deals through its authorized representatives or agents. Such agent may have had express authority to receive goods on behalf of the Defendant Company or transact on behalf of the company, or may have had implied authority by virtue of the job the individual was employed to do; or may have been held out by the Defendant as having authority to receive goods on its behalf; that is to say, had ostensible or apparent authority. (See ***Galbraith &Grant Ltd vs. Block [1922] 2 KB 155 and Kyadok Hardware Ltd v Kwik Building Contractors, Civil Suit No. 40 of 2014).***



In this case, the goods in issue were received by Ainebyona Bright on behalf of the defendant. DW1 stated that PE1, the delivery note was signed by his employees. That they received 400 bags of cement and bought each at shs 27,000/=. The person who signed PE1 (Ainebyona Bright) is the same person who signed PE2. DW1 is indicated as the person who requested for the goods on credit and they were received by his employees by his own testimony. DW1 does not deny receiving the goods in PE1 and PE2 and the same were received by his employees who had the authority to do so. Since the person who signed on behalf of the defendant was an employee of the defendant as per the testimony of DW1, it is my finding that he had apparent authority to do so in the absence of evidence to the contrary. Therefore PE1 and PE2 bind the defendant. I do find that there is a valid contract of supply of goods between the plaintiff and the defendant.

I now come to the issue whether or not the defendant is indebted to the plaintiff. In ***Kyadok Hardware Ltd v Kwik Building Contractors (supra), it was observed thus;***

> "*the burden of proof rests upon the party who substantially asserts the affirmative of the issue". – Refer to* ***Joseph Constantine Steamship Line vs. ImperialSmelting Corporation Ltd [1942] AC 154 at 174****.And "the standard of proof required in civil cases is generally expressed as proof on the balance of probabilities. If the evidence is such that the tribunal can say, we think it more probable than not, the burden is discharged, but if the probabilities are equal, it is not". –****Miller vs. Minister of Pensions [1947] 2 ALL ER 372 - Lord Denning***
>
> *I am fortified in my holding by the case of* ***JK Patel vs. Spear Motors Ltd SCCA 04/91,[1993] VI KALR 85*** *where it was held that "the law is that, where one party alleges that it paid another and the other denies receipt of*

the payment, the onus is on the party who alleges payment to prove the payment".

3 Further in ***Kitgum Co-operative Savings and Credit Society Ltd v Okanya John Calvin, HCCA No. 085 of 2018***, Mubiru J observed thus: ***"Like in all civil suits, the burden of proof lies on the creditor. Once there is a prima facie showing of an***
6 ***indebtedness or obligation to pay, the burden of proving the facts regarding payment is on the party who alleges payment, ordinarily the debtor. A prima facie case of indebtedness shifts the burden of production of evidence on the question***
9 ***of the correct pay off amount, to the debtor. Once the facts regarding payment have been demonstrated, the creditor then has the burden of proving that the payment was not effective to extinguish the debt or to satisfy the lien. The creditor***
12 ***thus bears the ultimate burden of persuasion."***

In the present case, the plaintiff through PW1 presented PE1 and PE2 stating that the goods therein were supplied on credit and the defendant failed to pay. PW1
15 further stated that he made constant reminders to the defendant who paid a deaf ear. He further presented PE3, PE4 and PE5 which are some of the items which were supplied and paid for by the defendant. DW1 asserted that he did receive the goods
18 in issue and paid cash upon delivery. The evidential burden in the circumstances was on the defendant who alleged payment to prove the payment.

I have examined the evidence on record and nature of relationship between the
21 parties herein. PW1 stated in cross examination that the defendant and specifically DW1 was his customer and the plaintiff continued supplying DW1 with goods as DW1 asked the plaintiff to be patient to allow him sell and pay later. DW1 continued
24 asking for more time within which to pay saying the sales were rather slow. These facts were not successfully challenged in further cross examination.

It is thus deducible that these were two companies transacting with each other on the basis of trust. PW1 in cross examination stated that what forced him come to court is the manner in which the defendant behaved when he approached DW1. PW1 stated that the defendant did not pay for these goods. I have also further considered PE2 where it was indicated that the money was to be deposited on the account and this was signed by the employee of the defendant. There is no evidence that the same was deposited as indicated therein. Whereas DW1 claims that he paid all the money in cash upon delivery, one wonders how his employee would then sign on a delivery note indicating that money was to be paid on the account. It was unclear from the testimony of DW1 as to whether he is the one who paid the money or his employees. He did not lead supporting evidence on his assertion that he used to pay all the money in cash or had paid for these goods in cash on delivery.

I find that the case of the plaintiff is more believable that there was a delivery of the goods on credit by the plaintiff which were not paid for by the defendant. It is my finding that the defendant is indebted to the plaintiff in the sum claimed in the plaint. I therefore resolve these issues in the affirmative.

Issue No. 3: Remedies:

Learned counsel for the plaintiff contended that general damages are a direct or probable consequence of the wrongful act complained of and includes pain, suffering and anticipated loss. (See ***Kabona Brothers Agencies v Uganda Metal Products &Enameling Co. Ltd [1981-1982) HCB 74***). He argued that since the plaintiff is a business man and his money was not paid, the plaintiff suffered an economic inconvenience and as such is entitled to general damages.

Learned counsel also prayed for interest on the decretal sum. He submitted that where interest is not agreed upon by parties, section 26 of the Civil Procedure Act allows court to award interest that is reasonable and just. ***(See Stanbic Bank (U) Ltd v Hajji Yahaya Sekalega T/a Sekalega Enterprises, HCCS No. 185 of 2009).*** That in determining interest, inflation and depreciation of currency should be taken into account. He thus prayed for award of interest at 48% per annum for the past three years since the currency has greatly depreciated.

Learned counsel for the plaintiff also prayed for costs. He cited section 27 of the Civil Procedure Act which is to the effect that costs follow the event. He thus prayed for an award of costs to the defendant.

CONSIDERATION BY COURT

(a) General damages:

The principle of law is that "general damages are such damages as the law presumes to be the natural or probable consequence of the Defendant's act and need not be specifically pleaded. It arises by inference of law, and need not, therefore, be proved by evidence, and may be averred generally. According to the case of ***Haji Asumani Mutekanga vs. Equator Growers Ltd (Supra) –"general damages in breach of contract are what a court may award if it cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man"***. (See***Kyadok Hardware Ltd v Kwik Building Contractors (supra).***

Further, Order JSC (as he then was) in ***Haji AsumanMutekanga v Equator Growers Ltd, SCCA No. 7 of 1995*** cited the decision of ***Ratcliffe v. Evan (1892) 2 Q.B. 524, Bowden L.J,*** at pages 532-533 thus; "*The character of the acts themselves which produce the damage, and the circumstances under which these acts are done*

must regulate the degree of certainty and particularity with which the damage ought to be…………… proved. As such certainty must be insisted on……………….. in proof of damage as is reasonable, having regard to the circumstances and the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pandatory."

He further observed that; "***General damages consist, in all, items of normal loss which the plaintiff is not required to specify in his pleading in order to permit proof in respect of them at the trial. Its distinction from special damages was defined by Lord Wright in*** **Monarch s.s. Co. V Karlshanus Oliefabriker (1949) AC, 196….** ***With regard to proof, general damages in a breach of contract are what a Court (or jury) may award when the Court cannot point out any measure by which they are to be assessed, except the opinion and judgement of a reasonable man.."***

In the present case, the plaintiff contended that the acts of the defendant delaying to pay his money caused him inconveniences. Since the plaintiff and the defendant are business partners, I find that an award of a reasonable sum would play a big role in maintaining such relationship. I therefore find an award of shs 5,000,000/= as general damages for the likely inconvenience's suffered by the plaintiff to be adequate.

(b)Interest:

Section 26(2) of the Civil Procedure Act provides thus; "*Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged*

from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

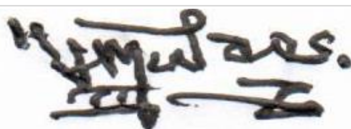
Therefore, save where parties have agreed upon the interest to be paid, any interest awarded by court on the decree is at the discretion of court. Court should only exercise the discretion to grant interest only in deserving circumstances and upon presentation of evidence. It is not automatic that interest must be granted on the decretal sum.

In **Omunyokol Akol Johnson V Attorney General, Supreme Court Civil Appeal No. 6 of 2012, Odoki Ag. JSC (as he was)**, stated in relation to interest thus; *"lt is well settled law that the award of interest is in the discretion of court..."*

It was further stressed by Senoga Anglin J ***Kyadok Hardware Ltd v Kwik Building Contractors***(supra) where she observed thus; "*where no rate of interest is provided, the rate is fixed at the discretion of court. However,it is recognized that in commercial transactions, the award of interest should reflect thecurrent commercial value of the money". – Refer to Crescent Transportation Co. Ltd vs. B.M Technical Services Ltd CACA 25/200 and HarbuttsPlasticine Ltd vs. Wyne Tank& Pump Co. Ltd [1970] IQB 447."*

The plaintiff's company being one that is engaged in business, I think it is fair to award them interest on the decretal sum. I therefore find an award of 20% per annum from the date of the decree till payment in full fair and reasonable and thus grant the same.

(c) Costs:

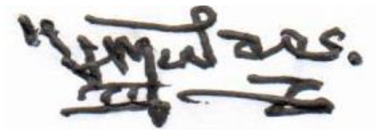


It is trite law that costs follow the event and a successful party should be granted costs unless his conduct largely led to the suit before court. Therefore, since the plaintiff in this case is successful, I hereby grant them costs of the suit.

Therefore, the plaintiff's suit succeeds with the following orders:

1. **A declaration that the defendant breached the contract for supply of goods and thus is ordered to pay a sum of shs 50,578,814 being the value of goods supplied on credit and were not paid for.**
2. **General damages of shs 5,000,000/= are awarded to the plaintiff.**
3. **Interest on general damages at 20% per annum from the date of delivery of this judgment till payment in full.**
4. **Costs of the suit are awarded to the plaintiff.**

I so order.



Vincent Wagona

High Court Judge

FORTPORTAL

DATE: 5/04/2024